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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1333

INQUIRY CONCERNING A JUDGE No. 12-613
LAURA M. WATSON

On Review of the Recommendations of the
Hearing Panel, Judicial Qualifications Commission

AMICI CURIAE DR. PHILIP BUSEY, SAMUEL D. LOPEZ, ESQ., JAY NEAL, AND PETER SZYMANSKI'S MOTION FOR REHEARING OF THE CLERK'S ORDER DENYING AND STRIKING THEIR AMICI *CURIAE* BRIEF AND APPENDIX

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Dr. Philip Busey (hereinafter "Busey"), Samuel D. Lopez (hereinafter "Lopez"), Jay Neal (hereinafter "Neal"), and Peter Szymanski (hereinafter "Szymanski") (collectively hereinafter "*Amici*"), hereby seek Rehearing of the Clerk's Order Denying and Striking their *Amici Curiae* Brief and Appendix (hereinafter "*Amici Curiae* Order").

On July 2, 2014, the *Amici* filed their Motion for Leave to File Brief as *Amici Curiae* (hereinafter "Motion"), and their Brief in Support of the Appellant, the Honorable Laura Marie Watson's (hereinafter "Judge Watson"). On July 11, 2014, the JQC[1] filed their Response in Opposition to the *Amici's* Motion for Leave to File Brief as *Amici Curiae* (hereinafter "Response"). On July 18, 2014, the Clerk issued an Order, which denied and struck both the *Amici*'s Brief and Appendix, but it was not signed nor attributed to any of the Supreme Court Justices.

The *Amici Curiae* Order was issued without authority pursuant to Florida Supreme Court's Internal Operating Procedures, and/or without factual and/or legal grounds, as detailed *infra*.

Contrary to Florida Supreme Court's Internal Operating Procedures, the Clerk issued the *Amici Curiae* Order, rather than a Florida Supreme Court Justice. Florida Supreme Court Operating Procedure VI provides:

[1]Hereinafter, the Florida Judicial Qualifications Commission will be referred to as "JQC".

> [t]he chief justice and the administrative justice have authority to dispose of routine procedural motions, such as those seeking an extension of time, permission to file enlarged briefs, an expedited schedule, or a consolidation of cases. The chief justice and the chief justice's designee also have authority to grant requests for a stay during the pendency of a proceeding and a thirty-day stay of mandate pending review by the United States Supreme Court in order to allow counsel the opportunity to obtain a stay from that Court. Motions filed after a case has been assigned to a justice are ruled on by that justice.

The plain language of Florida Supreme Court's Internal Operating Procedure VI does not allow a Clerk to rule on routine procedural motions, *let alone* a substantive motion to file an *amicus curiae* brief. It appears that the Clerk *not only erroneously* issued a ruling on a substantive motion that was not authorized by any of the Justices, *but also* struck the *Amici's* Brief and Appendix, which was not requested by any of the parties.

The JQC's Response takes the facts and extant decisional law on *amicus curiae briefs* out of context because a plain read of the *Amici's* Motion or the *Amici's* Brief reveal that the *Amici* followed the law by making and elaborating on arguments pertinent to them, and 691,025 other voters, and/or contributors and four (4) candidates, that were raised in Judge Watson's Brief.

As a preliminary matter, the sentence cited by the JQC of the *Amici's* Motion is taken completely out of context, and used to buttress the JQC's ipse dixit that the *Amici* are "simply rehash[ing]" an argument Judge Watson made:

> The principal ground advanced in Busey's Motion for Leave is that 'the Amici seek to participate…to explain why this Court has the equitable duty and Inherent Power to estop the JQC's impermissible post-election challenge to Judge Watson's election, and reject the Recommendations.'

[Response p. 3]. Such sentence was taken out of page (6) of an eight (8) page motion as to how the *Amici* can assist this Court and speaks to the relief the *Amici* seek, and does not contain the other bases the *Amici* argue for their participation, which include the issues of voters and candidates' constitutional rights that are being trampled upon by the JQC and its Recommendations. The remainder of the paragraph in the *Amici's* Motion, *not cited by the JQC*, provides additional reasons *why the Amici seek to participate*, and, as it was a motion for leave to file, and not the brief itself, it need not recount all of the arguments to be made in the amicus brief, but since the *Amici's* Brief was filed simultaneously with their Motion, all of their arguments were available to the Clerk and Justices:

> The Amici will explain the inseparable relationship and constitutional rights of the voters and the candidates, and how the JQC's Recommendations divest the voters of their candidates, votes, and/or contributions. They also explain why, if successful, the JQC's impermissible post-election challenge, *not only* disenfranchises over half a million voters and wastes a quarter of a million dollars, *but also* turns a nonpartisan election into a partisan appointment [App. Tabs 1-6]. Furthermore, the *Amici* explain how the denial of Judge Watson's due process rights and the ability to defend her office equates with the denial of her voters' due process rights. As detailed in the *Amici's* Brief, providing voters' and/or candidates' rights, freedoms, and protections is constitutionally required and protected by the Florida Constitution, and/or U.S. Constitution.

[*Amici's* Brief p. 6-7]. While the issue of the negative effect of the Recommendations and removal of Judge Watson, without due process, upon voters was raised in Judge Watson's Brief, it was not thoroughly addressed, and certainly not addressed, as it was in the *Amici's* Brief, from the perspective of the constitutional rights of 691,025 voters, three (3) other candidates, and the people who contributed their time, and $267,680.31 in hard earned money to the four (4) campaigns in the judicial race.

Furthermore, an *amicus* does not have standing to address issues that have not been raised by the parties. *See* Action II v. Ft. Lauderdale Hospital, 418 So. 2d 1099, 1101 (Fla. 1st DCA 1982); Turner v. Tokai Financial Services, Inc., 767 So. 2d 494, 496 (Fla. 2nd DCA 2000). As noted by the 1st DCA, an:

> amicus is not at liberty to inject new issues in a proceeding; however, amicus is not confined to solely arguing the parties' theories in support of a particular issue. To so confine amicus would be to place him in a position of parroting 'me too' which would result in his not being able to contribute anything to the court by his participation in the cause.

Keating v. State of Florida, 157 So.2d 567, 569 (Fla. 1st DCA 1963). The *Amici* have properly "collect[ed] background or factual references that merit judicial notice;" have "particular expertise not possessed by any party to the case;" "argue points too far-reaching for emphasis by a party intent on winning a particular case;" and "explain the impact [of the Recommendations] on" the *Amici*, and over half a million other voters, three (3) other candidates, and the quarter of a million

dollars contributed to the subject race. Neonatology Associates, P.A. v. Commissioner of Internal Revenue, 293 F.3d 128, 132 (3rd Cir. 2002)(Citations omitted.)

Furthermore, the *Amici*, having made "a strong but responsible presentation in support of [Judge Watson] can truly serve as the court's friend," and thereby denying the *Amici's* Motion and striking their Brief and Appendix "deprive[s] [this C]ourt of valuable assistance:"

> Indeed, it is frequently hard to tell whether an amicus brief adds anything useful to the briefs of the parties without thoroughly studying those briefs and other pertinent materials, and it is often not feasible to do this in connection with the motion for leave to file. Furthermore, such a motion may be assigned to a judge or panel of judges who will not decide the merits of the appeal, and therefore the judge or judges who must rule on the motion must attempt to determine, not whether the proposed amicus brief would be helpful to them, but whether it might be helpful to others who may view the case differently. Under these circumstances, it is preferable to err on the side of granting leave. If an amicus brief that turns out to be unhelpful is filed, the merits panel, after studying the case, will often be able to make that determination without much trouble and can simply disregard the amicus brief. On the other hand, if a good brief is rejected, the merits panel will be deprived of a resource that might have been of assistance.

Id. At 131-133. Therefore, this Honorable Court should grant the *Amici's* Motion for Rehearing, and its underlying Motion for Leave to File Brief as *Amici Curiae*, and reverse the Clerk's Order which also struck their Brief, and Appendix, which contain the *Amici's* many helpful insights, information, facts, and arguments.

Conclusion

The rules do not provide for clerks to rule on substantive motions, and the *Amici* properly flushed out arguments pertinent to their, and other voters' and candidates', interests raised in Judge Watson's Brief rather than simply "rehash" arguments she made. Therefore, it was *error* for the Clerk to deny the *Amici's* Motion for Leave to File Brief as *Amici Curiae,* and strike the *Amici Curiae's* Brief and Appendix.

***Amici's* Request for Relief**

WHEREFORE, the *Amici* respectfully request that this Honorable Court grant this, their Motion for Rehearing, Reverse the Clerk's July 18, 2014 Order, as to *Amici Curiae*, and Grant their Motion for Leave to File Brief as *Amici Curiae*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the E-Filing Portal by e-mail on this 31st day of July, 2014 to: Marvin E. Barkin, Esquire, and Lansing C. Scriven, Esquire, Special Counsel for the JQC, Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A. 101 East Kennedy Boulevard, Suite 2700, Tampa, Florida 33602 (Email: mbarkin@trenam.com; lscriven@trenam.com); Lauri Waldman Ross, Esquire, Counsel to the Hearing Panel of the JQC, Ross & Girten, 9130 South Dadeland Boulevard, Suite 1612, Miami, Florida 33156 (Email: RossGirten@Laurilaw.com, Susie@Laurilaw.com); Michael L. Schneider, Esquire, General Counsel to the JQC, 1110 Thomasville Road, Tallahassee, Florida 32303 (Email: mschneider@floridajqc.com); David B. Rothman, Esquire, Rothman & Associates, P.A., Special Counsel to the Florida Bar, 200 S. Biscayne Blvd, Suite 2770, Miami, Florida 33313 (Email: dbr@rothmanlawyers.com); Ghenette Wright Muir, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: gwrightmuir@flabar.org); Alan Anthony Pascal, Esquire, Bar Counsel, The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: apascal@flabar.org); Adria Quintela, Esquire, Staff Counsel The Florida Bar, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323 (Email: aquintela@flabar.org).

Pursuant to FJQCR Rule 10(b) a copy is furnished by e-mail to: The Honorable Kerry I. Evander, Chair of the JQC, 300 S. Beach Street, Daytona Beach, Florida 32114 (Email: evanderk@flcourts.org).

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